REMARKS

Applicants understand that claims 1-26 are pending in the application, and that claims 1-26 are currently held as rejected by the Office.

35 USC §102(e)

Touboul, US Patent No. 6,480,962 (the '962 patent)

The Office holds claims 1-6, 19-22 and 26 rejected under 35 USC §102(e) as being anticipated by the Touboul '962 patent. Applicants respectfully traverse this rejection.

Burden to Establish *Prima Facie* Obviousness:

The Office has the burden to establish a prima facie case of obviousness. The Federal Circuit stated in *In re Oetiker*: "[i]f the examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent. *In re Oetiker*, 24 USPQ 2d 1443, 1444. To establish a *prima facie* case of obviousness the Office is required, *inter alia*, to show: strict identity between the claimed invention and the cited disclosure; and that the cited disclosure is enabling of the claimed invention. Applicants submit that there is not "strict identity" between the claimed invention and the cited disclosure. Further, Applicants submit that the cited disclosure is enabling of the claimed invention

Strict Identity

he standard for finding anticipation is one of strict identity. In other words, to anticipate under §102, a single prior art reference must disclose all the elements (or their equivalents) functioning in the same way as the claimed invention (Shanklin Corp. v. Springfield Photo Mount Co., 187 USPQ 129, 133). For example, in *W.L. Gore & Associates v. Garlock, Inc,* 220 USPQ 303 (Fed. *Cir. 1983)*, the Federal Circuit stated that "[a]nticipation requires the disclosure in a single prior art reference of each element of the

claim under consideration." It is not enough, however, that the prior art reference disclose all the claimed elements in isolation. Rather, as stated by the Federal Circuit, "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the* claim." Further, under 35 USC §102, anticipation requires that ". . . the prior art reference must be enabling, thus placing the allegedly disclosed matter in the possession of the public." The Federal Circuit has added that: "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." *Scripps Clinic & Research Found. v. Genentech Inc*, 18 USPQ 2d 1001, 1010 (Fed. Cir. 1991).

The Office holds independent claim 1 as being anticipated by the '962 patent contending that Touboul discloses all of the elements of instant claim 1.

However, Applicants assert that the Touboul '962 patent: (1) does not disclose all of the elements (or their equivalents) of instant claim 1 functioning in the same way as the claimed invention; (2) does not disclose each and every element of the claimed invention *arranged as in the* instant claim. Additionally, Applicants assert that there are difference between the claimed invention and the '962 patent disclosure, as viewed by one of ordinary skill in the art at the time of the invention by Applicants. Applicants submit Tables I & II and the following remarks showing the failure of the cited reference to satisfy the requirement of "strict identity"for a §102 reference.

Table I shows the cited reference's requirement for a "communications channel" element, whereas the invention of instant claim 1 has no such requirement, and its protection features are enabled and function **without** a server and/or a communications channel, because the present invention does not depend on the hostile download coming via a communications channel in order to provide protection from hostile downloads. Omission of an element with retention of the element's unction is indicia of unobviousness. *In re Edge*, 359 F.2d 896, 149 USPQ 556 (CCPA 1966).

TABLE IA Identity Comparison of Required Elements			
Instant claim 1:	The Touboul System (100), see Fig. 1:	Is the Language:	
		Identical?	Equivalent?
Omitted	a server (110) and a communications channel (120)	**NO**	**NO**
an intrusion secure computer system	a client (130) with a security system (135)	NO	MAYBE

As disclosed in the '962 patent (at col. 2, line 61 to col. 3, line 8 and in Fig.1), the Touboul system requires that the "hostile" downloadable (140) from which the client (130) is protected come via a network communications connection (120). In contrast, the present invention of instant claim 1 does not require a server nor a communications connection to be able to protect a client from a hostile downloadable. This is an elemental difference between the present invention and the Touboul system. The present invention of instant claim 1 will protect the client from hostile downloadables on a floppy disk inserted into a client's floppy drive. The Touboul '962 patent does not teach or suggest this, nor can it be adapted to accomplish this because of the fundamental differences between the structure and function of the present invention and the Touboul system. Likewise, the present invention protects the client from hostile downloadables from optical disks and other external data storage media. The Touboul system cannot do this. Some of the reasons for this are set forth below.

Because the present invention of instant claim 1 does not require a communications connection nor a server, as does the disclosed Touboul system, there is not strict identity between the Touboul disclosure and the instant claims, and therefore, the present invention is not *prima facie* anticipated by the '962 patent reference.

However, proceeding *in arguendo* that it is the "client" of the Touboul disclosure that the Office considers to anticipate claim 1, Applicants make the following arguments and remarks.

The Office contends that disclosure in the Touboul '962 patent reference at col. 3, lines 9-40 anticipates instant independent claims 1, 6 and 26. Specifically, the Office contends that the cited passage discloses: "a CPU, a data storage means, a memory means, an operating system, a virtual machine operating system, and at least one I/O connection in operative communication with a data source." However, this is not an accurate reading of the subject disclosure (which refers to Touboul's Fig. 2 and describe the Touboul "client").

The virtual machine operating system of the instant claims is not the same as nor equivalent to the "security system" of the cited reference. The present virtual machine operating system includes a second complete and separate operating system (see page 14, lines 1-6. The Touboul reference discloses only one operating system; there is no teaching or suggestion of a second complete and separate operating system in Touboul.

As shown in Table II, the invention of instant claim 1 does not require a web browser, as does the disclosed Touboul system, the present invention is not *prima facie* anticipated by the '962 patent reference. Further, the present invention does require a second operating system, which the Touboul reference does not teach or suggest. Because Touboul does not disclose each and every element of the claimed invention arranged as in the instant claims, there are there is not strict identity between the Touboul disclosure and the present invention. Therefore, the present invention is not *prima facie* anticipated by the '962 patent reference.

TABLE II; "Client" Element Failure of Strict Identity: Language			
Instant Claim 1:	Cited Disclosure (Touboul):	Is the Language:	
		Identical?	Equivalent?
a CPU	a Central Processing Unit (CPU)	YES	
a data storage means	data storage device	NO	YES
a memory means	Random-Access Memory (RAM)	NO	YES
an operating system	an operating system	YES	
a virtual machine operating system	a security system	**NO**	**NO**
at least one I/O connection in operative communication with a data source	communications interface	NO	YES
Omitted	a web browser	**NO**	**NO**

Failure of Enablement

Applicants assert that not only are all of the elements of instant claim 1 not disclosed in the Touboul '962 patent, but also that without more, the Touboul '962 reference is not enabling of the present invention. More specifically, Applicants assert that the "virtual machine operating system" of instant claim 1 is not identical to nor equivalent to the security system 135 and JAVA Virtual Machine 250 of Touboul ('962, Figs. 2 & 3). The security system 135 of Touboul exists outside of the JAVA Virtual Machine 250, and includes a "database of suspicious downloadables" 328. In fact, the Touboul system will not work without a "database of suspicious downloadables" 328. In contrast., the present invention does not have such a database, and does not need such a database, and does not include such a database or its equivalent for its enablement.

Because the Touboul reference clearly does not enable the security system of the present invention without a database of suspicious downloadables, the Touboul reference is not enabling of the invention of the instant claims.

35 USC §103; rejections moot:

Applicants assert that in view of the above remarked failure of the Touboul reference to anticipate the instant independent claims, the §103 rejection of the dependent claims is moot.

Applicants believe that the above amendments and remarks are fully responsive to the Office Action mailed 24 November 2005. Applicants respectfully requests reconsideration and removal of all rejection of claims, and that in view of the above remarks, the application is now in condition for allowance. Applicants respectfully requests the Examiner to contact the undersigned to timely resolve any minor issues that may remain in the application. Alternatively, Applicants invites the Examiner to suggest alternative claim language for Applicants consideration, in order to facilitate timely prosecution of this application.

Respectfully submitted,

17 April 2005
Date

Sherman D. Pernia
Registration No. 34,404
281-335-4505